

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 06-1214-FH

RICHARD WILLIAM DEFAUW,

Defendant.

OPINION AND ORDER

Defendant is charged with two counts: (1) Receiving and Concealing Property \$1000 or greater but less than \$20,000; (2) Watercraft – forged title violation. A preliminary examination was conducted on March 17, 2006 before the Honorable Mark Fratarcangeli and was bound over as charged. Defendant has filed a motion to quash information and dismissal.

The owner of a 1999 Yamaha jet boat, James McClanahan, stored his boat at Miller Marina during the winter of 2004-2005 (Exam Transcript, p. 6). Mr. McClanahan testified during the preliminary exam that he last noticed the boat at the marina in either January or February 2005 (E.T., p. 6). The next time Mr. McClanahan checked on his boat was early April 2005 when he discovered it had been taken without his permission from the marina (E.T., p. 7-8). Subsequently on June 25, 2005, Mr. McClanahan observed his boat at a gas station and notified the police, who pulled over the vehicle hauling the boat (E.T., p. 9-12). The driver of the vehicle pulled over was identified as Defendant Richard Defauw (E.T., p. 27). An inspection of the boat by Officer Mascararello of the Macomb Auto Theft Squad showed the original Hull Identification Number, HIN, was ground off, and a plastic plate, was glued over with a new HIN



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(E.T., p. 25). A title history of the HIN on the plastic plate returned as a 2002 Yamaha (E.T., p. 27). However, a title history on the HIN that was ground off and other hidden HIN's on the boat returned as a 1999 Yamaha belonging to Mr. McClanahan (E.T., pp. 26-27).

Defendant argues in his Motion to Quash that there was no evidence introduced at the preliminary examination showing that the Defendant had the requisite knowledge the boat was stolen. The elements of receiving and concealing stolen property include: "did buy, receive, possess or aid in the concealment of a 1999 Yamaha boat, stolen, embezzled, or converted prope knowing that the property was stolen...." MCL 750.535(3)(A). Defendant argues the examining judge shifted the burden to the Defendant to prove he did not know the property was stolen. Defendant asserts he provided the police with a Bill of Sale from Jon R. Auctions and Liquidations and registered the boat with the Secretary of State. Defendant argues that these actions show Defendant believed the property was not stolen. Finally, Defendant asserts the testifying officers acknowledged they had no proof as to Defendant's knowledge that the boat was stolen.

The People argue in response that the issue of whether Defendant had the requisite knowledge that the property was stolen is a question of fact. People assert that the Defendant's Bill of Sale from Jon R. Auctions and Liquidations contained a selling date of January 8, 2005 but Detective Woodcox testified that a Miller Marina employee, Barton Herman, observed the boat on the marina property in late winter or early spring of 2005 (E.T. pp. 56-59). Further, People assert that Detective Woodcox testified that he found no indication that the auction is an actual entity, after checking the phone book, internet and contacting people involved in auctions (E.T., p. 50).

The decision to bind a defendant over is reviewed for abuse of discretion. *People v*

Beasley, 239 Mich App 548; 609 NW2d 581 (2000). In reviewing a district court's decision to bind a defendant for trial, a circuit court must consider the entire record of the preliminary examination, and it may not substitute its judgment for that of the magistrate. *Id.* Reversal is appropriate only if it appears on the record that the district court abused its discretion. *Id.*

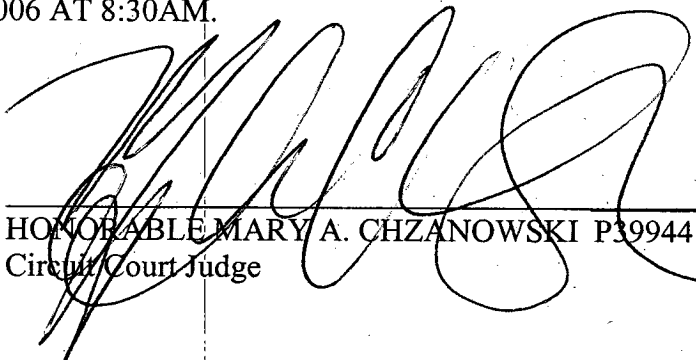
In the prosecution for receiving and concealing stolen property, the essential element of guilty knowledge generally must be inferred from all circumstances of case, including defendant's possession of subject property shortly after theft thereof, change in condition in subject property, alteration of identifying marks, serial numbers or registration, purchase price at variance with value of subject property and lack of a reasonable explanation by defendant for possessing such property. *People v Salata*, 79 Mich App 415 (1977). Guilty knowledge that goods were previously stolen is an element of the crime of receiving stolen goods, but such guilty knowledge may be actual or constructive and, while mere possession is not sufficient in and of itself to show guilty knowledge, the circumstances accompanying the transaction may justify the inference by the jury that the defendant received the goods on belief that they were stolen. *People v Wolak*, 110 Mich App 628 (1981).

The court is satisfied that the Motion to Quash Information and Dismissal of the case is not appropriate at this time. The court finds that the prosecution provided sufficient evidence to create probable cause the Defendant had knowledge the boat was stolen and it was not abuse of discretion to bind over the Defendant. Officer Mascarello testified the boat's HIN number was scratched off and a plastic plate with a different HIN number was glued in its place (E.T., p. 25). Further, the supposed purchase price of the boat was \$1,100, which was a significant variance from Mr. McClanahan's \$14,500 purchase price in 2002 (E.T., p. 14, 25). Mr. McClanahan also testified that he attempted to repurchase this exact boat in a recent auction and was not successful

in a bid of \$2,700 (E.T., pp. 21-22). In addition, a search of the yellow pages, internet and people involved in the auction business by Det. Todd Woodcox found no evidence that the auction house where the boat was allegedly purchased existed (E.T., p. 50). Detective Woodcox testified that he received no cancelled checks regarding the purchase of this boat from Jon R. Auctions (E.T., p. 63). This Court is persuaded that sufficient evidence was introduced to infer that the Defendant had knowledge that the boat was stolen and to bind the matter over for trial.

For the reasons set forth above Defendant's Motion to Quash Information and Dismissal of the case is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last pending claim and does not close the case. THIS MATTER IS SET FOR JURY TRIAL ON JULY 12, 2006 AT 8:30AM.

IT IS SO ORDERED.



HONORABLE MARY A. CHZANOWSKI P39944
Circuit Court Judge

Date:

CC: Kathleen L. Quigley, APA
Macomb County Prosecutor

Fred Gibson, Esq.
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Clinton Twp., MI 48038

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Carmella Sabaugh
COUNTY CLERK

BY 
DEPUTY CLERK